



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 5, 2021

BY ECF

Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Brandon Green*, S5 16 Cr. 281 (PGG)

Dear Judge Gardephe:

The Government respectfully writes in opposition to defendant Brandon Green's motion for a further extension of the February 9, 2021 deadline to file the attorney-client privilege waiver form and submit an affidavit in support of his ineffective assistance of counsel claims (Dkt. 940, 941). The Government notes that it complied with the Court's Order dated January 5, 2021 (Dkt. 923) to work with Green's standby counsel to ensure that Green receive the waiver form, a copy of the January 5 Order, and the Court's November 19, 2020 Order (Dkt. 907), which likewise instructed Green to execute an attorney-client privilege waiver form and set forth his allegations concerning ineffective assistance in an affidavit in order to proceed on those claims.

In light of the delay Green has caused and continues to cause, addressing his ineffective assistance of counsel claims prior to sentencing is no longer efficient, and the Court should set a sentencing date. Green's ineffective assistance of counsel claims will be preserved for him to bring on appeal or in a habeas petition, and in the interim, he can continue to seek documents and conduct whatever research he feels is necessary.

Since the January 5, 2021 conference, Green has cut off communication with standby counsel appointed by the Court and has filed approximately twelve letters and motions, mostly related to his objections to the proceedings, his complaints about prior counsel, his requests for additional time, and his complaints about the timeliness with which these letters are docketed. (*See* Dkt. 928, 931-34, 937-38, 940-44). These letters are consistent with numerous others Green has filed over the last year asking for more time to prepare his ineffective assistance claims. (*See, e.g.*, Dkt. 830, 890, 892, 893). Almost two years have passed since Green was convicted at trial, and over a year since the Court decided to adjourn sentencing to allow Green to pursue his ineffective assistance claims. However, the time Green has been granted so far has not advanced

the readiness of his claims in any discernible respect.

Green's requests for more time, both before and after the most recent conference, appear principally to relate to his allegedly unfulfilled need to obtain and review virtually every document and communication relating to his case before executing the waiver and articulating his claims in an affidavit. (*See, e.g.*, Dkt. 893, 940). For example, Green complains that he has not had adequate time to review the law enforcement 3500 material provided to him, which comprises "thousands" of pages. (Dkt. 940). However, only three law enforcement witnesses testified about Green at trial, so the relevant material is not nearly so voluminous. Further, Green has stymied efforts of the Court to proceed expeditiously or efficiently by refusing to communicate with the standby counsel appointed to assist him. His decision to cut off standby counsel has unnecessarily protracted and complicated these proceedings.

Accordingly, the Government respectfully submits that Green has shown no cause why the Court should reconsider its January 5, 2021 Order noting that, as "sentencing cannot be delayed indefinitely," if Green chooses not to submit the waiver form and affidavit as directed, the Court will proceed to sentencing.

Respectfully submitted,

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Cc: Brandon Green, by certified mail